

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Interconnection Between Local Exchange
Carriers and Commercial Mobile Radio
Service Providers)

CC Docket No. 95-185

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), pursuant to Section 1.415 of the Commission's Rules¹ and in response to the Notice of Proposed Rulemaking issued by the Commission on January 11, 1996,² hereby submits its comments in opposition to the Commission's proposal to mandate "bill and keep" compensation arrangements among interconnecting carriers.³ Although deceptively attractive because of its simplicity, a mandatory "bill and keep" arrangement, imposed even on an interim basis, will disserve the public interest by ignoring established and proven cost recovery principles; mandatory "bill and keep" will also distort the economic incentives to improve service and deploy network upgrades. These basic

¹/ 47 C.F.R. § 1.415.

²/ In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket No. 94-54, Notice of Proposed Rulemaking ("Notice"), released January 11, 1996. By Order and Supplemental Notice of Proposed Rulemaking released in this docket on February 16, 1996, the comment period was extended to March 4, 1996.

³/ In response to the Commission's request that all comments conform to a common format (Notice at n. 171 and accompanying text), RCA notes that its comments are provided under Section I, "General Comments," of the Commission's proposed outline.

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principles are embodied in the Telecommunications Act of 1996 (the "1996 Act"),⁴ the enactment of which deprives the Commission of the authority to impose mandatory "bill and keep" arrangements on telecommunications carriers. In support thereof, RCA shows the following:

While RCA is guided in this proceeding by its founding purpose to promote the use of cellular telecommunications services throughout rural America, the diverse member companies of RCA bring to this proceeding the benefit of experience in both the wireless and wireline industries. Formed in 1993 to address the distinctive issues facing rural cellular service providers,⁵ the membership of RCA includes affiliates of the only entities originally eligible for "B" block cellular licenses -- wireline telephone companies -- as well as rural "A" block carriers. RCA's perspective of the issues raised in this proceeding is not, therefore, limited to the immediate effect of mandatory "bill and keep" on either a cellular carrier's or a local exchange company's bottom line, nor is it confined to short-term competitive consequences of the Commission's proposals. Rather, RCA views this proceeding as the first of many crucial dockets which will establish the regulatory environment within which increasingly competitive and substitutable services will operate.

⁴/ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁵/ Currently, RCA member companies provide cellular service to predominantly rural areas of the country where more than 6 million people reside.

Working within the parameters of a Congressionally-mandated program which relies primarily upon market mechanisms, the Commission must establish a complementary regulatory framework which encourages market-based competition. This task requires the promotion of market-neutral interconnection principles on an industry-wide basis, the guidance for which is now provided by the 1996 Act. Because of the precedential importance of this proceeding, RCA views it necessary to focus on these principles and urges the Commission to consider their application to the telecommunications industry as a whole.

I. Mandatory "bill-and-keep" is an unwarranted departure from established principles of rational pricing.

Upon its initial review of the Commission's mandatory "bill-and-keep" proposal, RCA was concerned that the adoption of this policy, even on an interim basis, inexplicably failed to recognize the basic principles of cost recovery that historically have encouraged the investment in telecommunications infrastructure and the implementation of innovations in technology. In addition, RCA questioned the mandatory and universal imposition of a requirement which ignored existing negotiated agreements among carriers.

Continued investment in new services and expansion of the capacity of existing services in a competitive market requires that all carriers have the ability to recover their specific embedded costs through compensation paid by all users of their facilities.

A rational method of cost recovery is critical to ensure that carriers have the incentive to respond to new demand. Where no compensation is received for a specific category of facility use, responsiveness to the requirements of the public is compromised.

Negotiated interconnection and mutual compensation agreements among carriers, while requiring more time, are recognized by the Commission and the industry alike as producing superior results.⁶ Professing a concern with respect to the possibilities of delay in reaching compensation arrangements and the misuse of market power,⁷ the Commission tentatively concluded that mandatory "bill and keep" arrangements were appropriate. In so doing, the Commission reversed, without adequate explanation, its prior determinations that (1) it is inappropriate to preempt state regulation of LEC rates for interconnection⁸ and (2) that carriers should be "compensat[ed] for reasonable costs incurred . . . in terminating traffic that originates on (other carriers') facilities."⁹

The Commission's proposal to abandon mutual compensation principles is unjustifiable. Although the Notice cites objections

⁶/ Notice at para. 83.

⁷/ Notice at para. 58.

⁸/ Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order ("Second Report and Order"), 9 FCC Rcd 1411, 1497 (1994).

⁹/ Id. at 1498.

raised by various commenters that the process of negotiation is difficult,¹⁰ the Commission does not point to a single instance where either its formal or informal complaint processes have been accessed by frustrated CMRS providers.¹¹ Moreover, the short-term attraction of mandatory "bill and keep" is cancelled by basic business considerations. The lure of mandatory "bill and keep" is lost when the specter is raised that the same arrangement could potentially be imposed upon the interconnection of a new competitive wireless provider with the existing wireless systems of RCA members, who have undertaken considerable investment and risk to bring cellular service to rural America. Concern for facilitating the entry of new participants, while understandable, is insufficient cause for abandonment of a rational policy with proven public interest benefits.

RCA maintains that compensation mechanisms must be based upon the principles of cost recovery and should be established through carrier negotiations. While negotiations may rationally lead to a "bill and keep" arrangement, no such arrangement can rationally be imposed on interconnecting carriers. The utilization of

^{10/} See, Notice at paras. 27-28. It is interesting to note that many of the entities supporting mandatory "bill and keep" as opposed to negotiated arrangements are new PCS licensees or bidders, which may not yet have had the opportunity even to initiate mutual compensation discussions with other carriers.

^{11/} In the context of discussing symmetrical compensation arrangements, the Commission questions whether its complaint procedures are sufficient to ensure compliance with its rules. It does not suggest, however, that carriers have availed themselves of the procedures which exist. Notice at para. 81.

facilities, whether by the facilities owner or another user, necessarily involves some cost. If network facilities could be used without consideration of compensation, the owner will have no incentive to monitor or accommodate any demand other than that generated by its own end users. This failure to modernize where required will undermine the value of the network as a whole and prove detrimental to the public interest.

II. The Telecommunications Act of 1996 prohibits the imposition of mandatory "bill and keep."

After release of the Notice but prior to submitting its comments herein, RCA was encouraged to discover that the 1996 Act adopts the fundamental principles that would otherwise have been threatened by the Commission's proposed mandatory "bill and keep" mechanism. The 1996 Act, mandating negotiated cost-based compensation mechanisms, embodies the fundamental economic principles which are necessary to the efficient operation of a competitive market.

Under the 1996 Act, all local exchange carriers are required to interconnect with the facilities and equipment of other carriers.¹² In addition, all local exchange carriers are required to "establish reciprocal compensation arrangements for the

^{12/} 47 U.S.C. § 251(a)(1).

transport and termination of telecommunications."¹³ These Congressional directives represent codification of existing Commission policy.¹⁴

In direct opposition to the Commission's proposed mandatory "bill and keep" mechanism, however, the 1996 Act instead requires negotiated compensation arrangements¹⁵ which are based upon the principles of mutual, reciprocal cost recovery.¹⁶ "Bill and keep" arrangements, to the extent that such arrangements result from negotiations, are not prohibited.¹⁷ The 1996 Act, therefore, precludes the Commission's imposition of mandatory "bill and keep"

^{13/} 47 U.S.C. § 251(b)(5).

^{14/} See generally, Second Report and Order, 9 FCC Rcd 1411, 1497-98; Declaratory Ruling, 2 FCC Rcd 2910 (1987), aff'd on recon., 4 FCC Rcd 2369 (1989).

^{15/} Section 251(c) of the 1996 Act requires incumbent local exchange carriers "to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill . . . " their interconnect obligations. Section 252, in turn establishes a framework for voluntary negotiation or compulsory arbitration.

^{16/} Section 252(d) of the Act specifically established pricing standards for the establishment of just and reasonable rates to be based upon the cost of the provision of inter-connection, network elements, transport and termination of traffic.

^{17/} Section 252(d)(2)(B) provides that the principles established to determine just and reasonable rates

shall not be construed--

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)

arrangements, even on an interim basis.

III. Conclusion

RCA submits that rational intercarrier compensation arrangements cannot be mandated, but must result from a negotiation process. While negotiations may well yield a "bill and keep" agreement, it is inappropriate to dictate that, or any other, arrangement between carriers. Inasmuch as the major inquiry contained in this Notice has been addressed by Congressional action,¹⁸ RCA submits that the Commission's proposal to mandate "bill and keep" should be abandoned. In its place, and consistent with both the Commission's own existing policy and also the recent expression of Congressional conviction, the Commission should concentrate on encouraging the accomplishment of negotiated mutual compensation arrangements where possible and enforcing the

¹⁸/ RCA continues to support the Commission's tentative conclusion that CMRS providers must be entitled to recover access charges from IXC's to avoid unreasonably discriminatory treatment. Consistent with its general position in this proceeding, RCA supports the Commission's suggestion that arrangements between carriers should be established by contract and that CMRS providers' access charges should be based upon the individual carrier's specific costs.

principles of negotiated mutual compensation arrangements where necessary.

Respectfully submitted,

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March 4, 1996

CERTIFICATE OF SERVICE

I, Colleen von Hollen, hereby certify that a copy of the foregoing **"Comments"** on behalf of the Rural Cellular Association in CC Docket No. 95-185 was served on this 4th day of March 1996, by hand delivery, to the following parties:

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